

11AAC110

• Alaska Coastal Consistency Review Regulation Changes

Introduction

The following training highlights the primary changes made to the Coastal Consistency Review process under **11 AAC 110** adopted on July 1, 2004. These changes are summarized and found under the applicable stage in the Consistency Review Process.

There are numerous edits, many minor and technical in nature that address consistent use of terms, correct citations and appropriately cross reference other sections of law. These changes are not shown here however, they are identified in “the change text” version of the regulations available on the web under **Final 11 AAC versus Existing 6 AAC**.

Determine Applicability

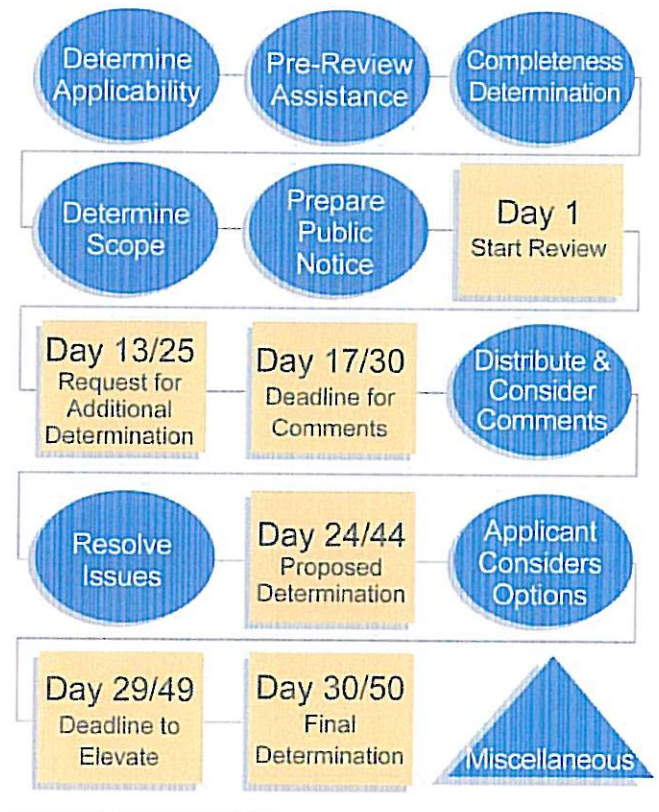
11 AAC 110.010(a) HB 191 Implementation

- Legislative changes to review process reflected in revised statute AS 46.40.096

11 AAC 110.010(d), (110.750b) DEC “Carve Out”

- Specific aspects of an activity that are subject to a DEC authorization are excluded from the scope of a consistency review.

Consistency Review Process Flowchart



- The issuance of the DEC authorization establishes consistency.
- Exception: In situations where specific aspects would otherwise be subject to DEC authorization but no DEC authorization is required because the activity is a federal activity or the activity is located on federal land or the outer continental shelf, DEC shall review those aspects of the project in accordance with their regulations and provide their findings to OPMP for inclusion in the ACMP review response.

11AAC 110.020(c), (110.415) Scope of Review

- The scope of the review shall be limited to activities of the project that are

(1) subject to a

(A) department (DNR) or Department of Fish and Game authorization identified in the C List;

(B) federal consistency determination identified under 15 C.F.R. 930.31; or

(C) federal authorization identified under 11 AAC 110.400; and

(2) as applicable, the subject of a district enforceable policy.

The scope of the review may also be limited by:

1) AS 46.40.094 Phased Uses and Activities

2) AS 46.40.096(g) Nationwide and General Permit exclusion, DEC carve out, Forest Practices Act, Oil and Gas Conservation Commission authorization exclusion.

3) 11AAC700 Categorically Consistent determinations and generally consistent determinations.

- The specific aspects of a proposed project that are subject to general and nationwide permits must be excluded from the scope of review (previously optional). [11 AAC 110. 700(a)(b)]

- The initiation of a consistency review for a proposed project with a scope limited by GP's, NWP's or DEC authorizations may proceed independent of the issuance of those authorizations. [11 AAC 110.265(e)]

- AS 4640.094(a)(2) Proposed project reviews may be phased if the proposed activity is capable of proceeding in discrete phases based upon developing information that was not available to the project applicant at the time of the previous phase (previously phasing allowed

only if information needed for a subsequent phase was obtained during the course of a phase).

11 AAC 110.030 OPMP Coordinated Reviews

- OPMP is the coordinating agency for projects that require authorizations from two or more department (DNR) offices.

11 AAC 110.040 DEC Single Agency Reviews

- DEC will review any activities subject to a DEC authorization or approval using the public review procedures established in DEC's statutes and regulations.

- For any projects that require only authorizations from DEC, DEC will be responsible for coordinating the review of any activities outside of those subject to a DEC authorization that are the subject of a district enforceable policy. Those activities will be reviewed for consistency against the remaining standards and district policies.

- DEC will conduct the limited single agency review using procedures set out in 11 AAC 110.200 – 11 AAC 110.275 after determining the scope of the activities subject to review in consultation with the coastal district.

11 AAC 110.050(e) Resource Agency Permit Conditions

- Following issuance of a final consistency determination, a resource agency may include additional stipulations or conditions on their authorization that were not included in the consistency finding only if they were not necessary to achieve consistency.

11 AAC 110.400 Federal Authorizations

- Reinstates right of way authorizations issued by the U.S. Fish and Wildlife Service and National Park Service as federal authorizations

subject to a consistency review. These authorizations were inadvertently omitted from the 6 AAC 50 regulations adopted in January 2003.

Pre-Review Assistance

Minor and technical edits are identified in “the change text” version of the regulations available on the web under **Final 11 AAC versus Existing 6 AAC**.

Completeness Determination

11 AAC 110.215(a)(1)(C) Applicant Evaluation

- The applicant’s submission must include an evaluation of how the proposed project is consistent with the state standards at 11 AAC 112.200 – 11 AAC 12.320 and with any applicable district enforceable policies.
- Implementation of this requirement will occur when the new standards receive federal approval.

11 AAC 110.220(a) Completeness Determination

- The coordinating agency has 21 days (previously 14) to determine if the applicant’s submission is complete and;
 1. if complete, initiate the ACMP review
 2. if not complete, notify applicant of needed information (21 day clock restarts when requested information is received)

11 AAC 110.265(a)(b), 110.345(a), 110.430(e) Deadline for Completing Review

- A final consistency determination/response must be issued within 90 days from receipt of a complete application or the activity subject to review will be conclusively presumed consistent.

Exceptions:

1. Not applicable to consistency review involving the disposal of an interest in state land.

2. Time limitation is suspended;

- for an applicants delay in responding to an RFAI; for the time between the 14th day after receiving the request until an adequate response is received.
- for the time period that a review is stopped at the applicant’s request.
- for the time period in which a review is undergoing an elevation.
- as per written agreement between the coordinating agency and a federal proponent or federal permitting resource agency.

Determine Scope

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The scope of the review may also be limited by:

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- The specific aspects of a proposed project that are subject to general and nationwide permits must be excluded from the scope of review (previously optional). [11 AAC 110. 700(a)(b)]

- The initiation of a consistency review for a proposed project with a scope limited by GP's, NWP's or DEC authorizations may proceed independent of the issuance of those authorizations. [11 AAC 110.265(e)]

- AS 4640.094(a)(2) Proposed project reviews may be phased if the proposed activity is capable of proceeding in discrete phases based upon developing information that was not available to the project applicant at the time of the previous phase (previously phasing allowed only if information needed for a subsequent phase was obtained during the course of a phase).

11 AAC 110.265(e) Review Initiation for NWP, GP and DEC Authorized Projects

- The initiation of a consistency review of a proposed project with a scope limited by GP's, NWP's or DEC authorizations may proceed independent of the issuance of those authorizations.

11 AAC 110.700(a)(b) General and Nationwide Permits

- The specific aspects of a proposed project that are subject to general and nationwide permits must be excluded from the scope of review (previously optional).

11 AAC 110.700 – 110.730 ABC List

- The ABC List has been adopted by reference into regulation (previously a policy document).



11 AAC 110.235(d) Public Copy of Review Packet

- The coordinating agency may either provide a copy of the review packet to each requesting individual or make one review packet available to the public for review and copying. This allows a choice for situations in rural communities where the copying requirement is not practical.



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Day 13/25
Request for
Additional
Determination

11 AAC 110.270(c) RFAI Restart

- Reviews that are stopped as a result of a request for additional information (RFAI), must be re-started on the following day that the review schedule was stopped, e.g., a review stopped on day 25 will now be re-started on day 26. (Formerly reviews were re-started on the same day the review schedule was stopped.)

Day 17/30
Deadline for
Comments

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Distribute &
Consider
Comments

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Resolve
Issues

11 AAC 110.810 Project Modifications and Termination

- Article 2 and 4 (State permitted and federally permitted) reviews may be terminated if the applicant fails to, within 30 days, respond to an RFAI or withdraws their project from review. The coordinating agency shall issue an objection to the applicant’s consistency determination.

Day 24/44
Proposed
Determination

11 AAC 110.255(g), 110.260(b), 110.335(c), 110.345(b), 110.440(c), 110.445(b) Consistency Explanation

- A proposed or final concurrence issued by the coordinating agency must include an explanation of how the proposed project is consistent with the applicable statewide standards and enforceable policies. (This replaces the previous requirement for an evaluation.)

Applicant
Considers
Options

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Day 29/49
Deadline to
Elevate

11 AAC 110.600 Petitions

- The former 11 AAC 50.610 and 11 AAC 50.620 Petitions to the Council and Hearing Procedures on Petitions (petitions process) have been streamlined and moved into 11 AAC 114.

11 AAC 110.600 Elevations

- Elevation process has been streamlined to proceed directly to the commissioner of DNR (previously began as a director level elevation, which could subsequently be elevated for a commissioner level final decision).

- Elevation timeframe changed from series of three 15 day steps to one 45 day process.
- If OPMP isn't the coordinating agency for a project (single agency reviews), the coordinating agency must transfer the elevation to OPMP.
- Commissioner can delegate elevation authority.
- OPMP handles invitations to commissioner or delegee elevation meetings. Attendees to elevation meetings no longer need to be directors or delegees. All former lower (director) levels of appeal are removed.
- Attendees may present written materials and testimony or rely on the existing project record. Meeting must be recorded electronically.
- The commissioner will issue a written decision within 45 days of the request for elevation.
- OPMP will issue and distribute a final consistency determination or response that reflects the written decision of the commissioner or delegee.

Day 30/50
Final
Determination

11 AAC 110.265(d) Issue Final

- The final consistency determination is issued five days after the issuance of the proposed consistency determination (formally after receipt of).

11 AAC 110.350(b) Compliance

- If a requirement set out in a final consistency response is more or less restrictive than a similar requirement in a resource agency authorization, the federal agency shall comply with the more restrictive requirement.



11 AAC 110.900 Emergency Expedited Reviews
References to DEC in emergency expedited review process deleted from ACMP regulations.

11 AAC 110.990 Definitions

• Added:

1. Reasonably foreseeable: a fact-specific determination of whether something can reasonably be foreseen; "reasonably foreseeable" does not include remote or speculative consequences.

• Deleted:

1. Biological or physical resources (previously found in habitat standard)
2. Council (Alaska Coastal Policy Council)
3. DGC (Division of Governmental Coordination)